

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

JAMES O'NEAL,

Petitioner,

-vs-

MARGARET A. BAGLEY,

Respondent.

:

Case No. 1:02-cv-357

:

District Judge Michael R. Barrett  
Chief Magistrate Judge Michael R. Merz

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**DECISION AND ORDER GRANTING IN PART AND DENYING IN PART  
PETITIONER'S MOTION FOR DISCOVERY**

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This case is before the Court on Petitioner's First Motion for Discovery (Doc. No. 41). Respondent opposes the Motion (Doc. No. 43) and the time for filing a reply in support has expired under S. D. Ohio Civ. R. 7.2

The legal standard for granting discovery in a habeas corpus case is correctly stated in Petitioner's Motion and need not be repeated.

Petitioner may depose his defense counsel as requested. With respect to the proposed depositions of the landlord and the records custodian of the Hamilton County Sheriff, the Court is inclined to agree with Respondent that these depositions may be regarding evidence which is legally irrelevant. However, in an abundance of caution, the Court will allow the depositions. Petitioner should note, however, that any resulting evidence can be introduced at an evidentiary hearing only if Petitioner can show that he diligently sought to obtain and introduce such evidence in the state court proceedings. *Michael Williams v. Taylor*, 529 U.S. 420 (2000); *Keeney v. Tamayo-Reyes*, 504 U.S. 1 (1992).

All discovery herein shall be completed not later than November 15, 2007.

August 9, 2007.

s/ **Michael R. Merz**  
Chief United States Magistrate Judge